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DEFINITE PROGRESS TOWARD REFORM IN PROCEDURE.

That the procedure of the law must be amended so as to eliminate useless technicalities of pleading and evidence inherited from a less progressive age is now very generally admitted by lawyers. And it is not denied that, with the co-operation of President Taft, definite progress has been made within the last few years to liberalize the rules of practice.

At the recent meeting of the American Bar Association, in Boston, the sentiment was strong and enthusiastic for this particular reform and the committee's report on this subject, now published, is surprising in the extreme to which even conservative lawyers are ready to go to release the law from the burdens of purely procedural obstacles.

But the difficulty hitherto has been to find a proper opening to inaugurate the reform under conditions that would assure its adoption and success. That opportunity has occurred in the bill passed by the last Congress at the request of the President, giving to the Supreme Court of the United States power to revise the equity rules for the federal courts. The present idea of the Committee of the American Bar Association is to have Congress enlarge the scope of this investigation to include both law and equity rules so that the Supreme Court shall have opportunity to draft an ideal code of pleading and procedure for the federal courts that will eliminate all useless technicalities and delays and become an ideal code for every state in the Union.

The Supreme Court has entered upon its task with great earnestness and has commissioned Justice Lurton, of the subcommittee, having the matter in charge, to visit England and make a full investigation of the workings of the new Judicature Act of that country. Moreover, a large committee of representative lawyers has been summoned from each federal circuit to convene in Washington, in October of this year to confer with the committee in drafting the new rules.

In view of this splendid opportunity for reform, the American Bar Association has decided through its committee on Reform in Procedure, to co-operate with the efforts of the Supreme Court to draft the rules of equity and to press the reform through this channel until ultimate success is almost certain to be reached.

Every member of the bar should direct his attention to the subject of procedure to the end that this great reform, which is now emerging from the realm of academic discussion, shall not be the work of one man as in the case of the change from common law to code pleading, but shall represent the thoughtful convictions and common sense of the entire legal profession. And the committee of the Supreme Court having in charge the revision of the equity rules, probably with this idea in mind, invites the co-operation of all lawyers through the committees appointed in the various federal circuit. Following is the letter that has been sent out by the Supreme Court Committee:

"Washington, D. C., June 9, 1911.

"The Supreme Court of the United States desires to consider the subject of revising the equity rules, and in connection with that subject the reformation of pleading and practice in equity cases in the courts of the United States, to the extent that that matter is subject to the court's authority under sections 913 and 917 of the Revised Statutes of the United States. The court, therefore, prior to its adjournment for the term, appointed a committee from among its membership with directions to consider and report such changes as the committee may conclude would, if adopted, tend to the simplification of pleading and practice and the correction of any unnecessary delay or unreasonable cost resulting from practices under the rules as they now exist.

"The committee thus appointed is advised that the subject-matter which it is appointed

to consider has been for some time under investigation by a committee of the American Bar Association, and, of course, it will gladly receive and consider any definite suggestion which that committee may deem it proper to make as the result of its work.

"Desiring, however, before it makes its report to the court, to have the benefit of every possible suggestion from all sources, the committee appointed by the court earnestly requests the co-operation of the several Circuit Courts of Appeal of the United States. To this end it ventures to suggest that each of those courts appoint a committee of at least three from their respective bars to prepare and suggest such changes in pleading and practice in equity in the courts of the United States as such committee may deem it would be wise to adopt, and when the changes are put into definite shape, to file the same with the secretary of this committee at the earliest possible moment, certainly on or before the 1st day of November next.

"While not desiring to exclude any definite suggestion from any judge or from any member of the bar, the committee hopes, in order to avoid complexity, that any suggestion which it is thought best to make may be forwarded through the instrumentality of the committee of the bar to be appointed by the respective Circuit Courts of Appeal, as above requested.

EDWARD D. WHITE,
HORACE H. LURTON,
WILLIS VAN DEVANTER."

The secretary of the Supreme Court Committee is Mr. Wm. J. Hughes, who will keep the records of the greatest commission on reform in procedure since the days of David Dudley Field. The American Bar Association is wise in directing its proposition for reform in procedure through the channel that has been so opportunely opened.

We shall follow this reform closely and shall keep our readers informed promptly of every development therein. We should also be glad to receive suggestions which are calculated to assist the committee in their deliberations.

NOTES OF IMPORTANT DECISIONS

STATUTORY CONSTRUCTION—ENJOINING ENFORCEMENT OF STATE STATUTE BY ORDER OF THREE FEDERAL JUDGES.—The act of June 8th, 1910, which prohibits the granting of any interlocutory injunction suspending or restraining the enforcement, operation or execution of any state statute by restraining the action of any state officer by a single federal judge has been recently construed in Ex parte Metropolitan Water Co. of West Virginia, 31 Sup. Ct. 600.

District Judge McPherson was applied to, to enjoin the enforcement of a Kansas statute on the ground of its unconstitutionality, and, being of opinion that the statute was not unconstitutional, he held that he could, without calling to his assistance two other judges, deny, though without such assistance he could not grant, any interlocutory injunction.

The applicant for injunction asked for mandamus to compel him to call to his assistance two other judges, upon the ground that the single judge had no jurisdiction to pass on the question of the granting or not granting the interlocutory injunction, but the direction of the statute was mandatory for him to call to his assistance two other judges, a majority of the three being alone authorized either to grant or deny such injunction.

The mandamus was made absolute, the Chief Justice speaking for the entire court.

The principal ground of the opinion for this conclusion is, that there is given a right of appeal directly to the supreme court from any order, by a majority of the three judges, either granting or denying an interlocutory injunction, while from an order by the judge applied to denying such injunction there is no provision for such an appeal.

The construction by the chief justice seems to us in clear conformity with the manifest purposes of the Act of Congress, i. e., to take away from a single judge any jurisdiction to determine any question as to the enforceability of such a statute and to prevent him from standing in the way of a speedy determination by the supreme court of the merits of any application for any such injunction.

To allow a single judge to refuse an interlocutory injunction in an action where a permanent injunction and other relief were prayed, and for it to be eventually determined, possibly by the judge who first denied interlocutory injunction, that the injunction should have been granted, would keep questions, which Congress intended should be setled *in limine*, in abeyance.

Judge McPherson's difficulty seemed to be in not being able to bring himself around to the

conception, that federal judges, so long accustomed to wield jurisdiction unrestrained as to state matters, were being stripped bare thereof, unless they put themselves in statutory position for its exercise.

It was like, to him, the taking away of something akin to an inherent right. The statute is a good one and the decision as to its meaning shows that it will not be frittered away by any sort of refinement.

THE AMERICAN BAR ASSOCIATION MEETING OF 1911.

When we arrived in Boston, on Monday, August 28, 1911, arrangements for the meeting of the American Bar Association, on the following day, had already been fully made by the efficient committee of the Massachusetts Bar Association.

A large number of lawyers were already in the city attending the preliminary meeting of the Association of American Law Schools and the meeting of the Commissioners on Uniform State Laws.

Of the work of the Commission on Uniform State Laws, we have asked Mr. George Walter Smith, of Philadelphia, to prepare a special report for this journal. Mr. Smith is the very efficient and affable chairman of this commission, whose painstaking care in the preparation of special acts has been the secret for the success that has attended its efforts to unify and codify the laws of the various states, at least along commercial lines. At this year's meeting the divorce laws of the various states have been the subject of discussion and the commission has arrived at some very definite conclusions, which will be announced later.

The Association of American Law Schools opened auspiciously with a large number of the leading law schools of the country represented. President William R. Vance delivered the annual address.

One of the most remarkable addresses at this meeting was that of Dean Harlan F. Stone, of the Columbia University Law School. Dean Stone struck hard at the two extremes in law school work, to-wit, extreme scholasticism and extreme materialism. He favored neither the man who contended that academic research into fundamental principles was all that was necessary to fit a man to practice law nor the man who contended that a mere law office experience was sufficient. He recognized both and suggested that young lawyers be encouraged to enter law offices for a certain period before entering upon the practice of law. In this connection he condemned most court work and legal dispensary schemes as detrimental if such enterprises interfered with the regular curriculum. He aroused considerable discussion when he contended that every instructor in a law school should have had some actual experience at the bar before attempting to teach law.

Hon. Edgar H. Farrar, of New Orleans, delivered the presidential address. This address was unusual in the intense interest it aroused, an interest so great that hundreds of delegates demanded that it be immediately printed and generally circulated.

The address, after dealing briefly with such new legislation as seemed to be of importance, diverged onto the general subject of corporation law. Mr. Farrar traced the beginning of the corporation from the dim past to the present time and showed that it was always at the popular demand that the corporation was created and given new powers and a continually wider scope. In fact, he charged the people with the blame for the opportunities for fraud and corruption under modern corporation statutes. Especially did he condemn that pernicious legislation that granted to one corporation the right to hold stock in another. But worse than this, the speaker thought, was an extremely liberal attitude in not a few states, where there seemed to be a jealous rivalry for the distinction of holding out the most liberal inducements to corporations. The situation created had become so intolerable that two very drastic remedies had been proposed. The first remedy, said Mr. Farrar, was a national incorporation act and the second, an embargo by the other states against all corporations created by states like New Jersey, which persist in creating legal entities with unlimited capital and unregulated powers to roam at will over the country preying upon the commerce of the states.

The first remedy Mr. Farrar contended in a most able brief was unconstitutional since the supreme court had distinctly assumed, if not actually decided, in a long line of cases that Congress could create a corporation only for a public purpose or a quasi-public purpose, as, for instance, a railroad or a steamship company. It could not create a manufacturing corporation, and if it could, the states could easily nullify its operation outside of the territories and the District of Columbia by preventing it from doing any intrastate business. Congress, moreover, could not clothe a purely private enterprise with the power of eminent domain nor make it an agency of the federal government.

The second remedy, thought Judge Farrar, while legal and possible, was too drastic. An

embargo by certain states against the corporations created by other states would result in reprisals and a disastrous, internecine strife would result. He suggested that the House of Governors or some other equally influential body of representatives from each state should meet to pass a uniform corporation law or indorse the one to be proposed by the Commission on Uniform State Laws.

Tuesday evening, August 29, was given over to the discussion and adoption of the reports of the following standing committees and bureaus, to-wit: Jurisprudence and Law Reform; Judicial Administration and Remedial Procedure; Legal Elevation and Admissions to the Bar; Commercial Law; International Law; Grievances; Obituaries; Law Reporting and Digesting; Patent, Trade-mark and Copyright Law; Insurance Law; Uniform State Laws; Taxation; Comparative Law Bureau.

The surprise of this evening's session was the debate on the proposal to start a new campaign for increase in the salaries of federal judges, and the very strong current of sentiment that this campaign should cease, at least for the present, as recommended by the committee on Jurisprudence and Law Reform. The astounding fact that the resolution that was offered appointing a committee to solicit from Congress a further consideration of the subject of increasing the salaries of federal judges only passed by a bare majority of 115 to 107, does not indicate a very strong sentiment in the profession for this reform, and the general opinion of members of the association was that it would not be sufficient to encourage the committee or the profession to press the matter very seriously upon the attention of Congress at the next session. The greatest surprise of this debate was occasioned by the large number of eminent lawyers and even judges that followed the lead of Gen. W. A. Ketcham, of Indianapolis, who contended that outside of a few very large cities, the salaries of federal judges was not too small and that it was preposterous to proclaim to the people and to Congress that such judges would earn twice the amount of their salaries as private practitioners. Mr. Nathaniel W. Ladd, of Boston, also contended that the American Bar Association was in danger of losing prestige by continually begging Congress to increase federal judicial salaries. Bench and bar were in the minds of the people identical and the continual pressure of this question would emphasize in the minds of the people a suspicion that the association was selfishly working in its own interests. And especially was this true at this time, said Mr. Ladd, when Congress had definitely rejected the recommendations of the association, last April, when a full representation from the association waited on the committee having in charge the bill to increase the salaries of all federal judges. When Congress has so recently declined to raise the salaries of the inferior federal judges, raising only those of the supreme court judges, the association should hesitate to trouble Congress again with the same issue so soon after its rejection. Hon. W. B. Hornblower, of New York, and Gov. Emmet O'Neal, of Alabama, led the fight for renewing the efforts to increase the salaries immediately.

Wednesday morning's session (August 30, 1911), was notable by reason of the learned and remarkable address by Justice Henry B. Brown of the United States Supreme Court, retired, on "The New Federal Judicial Code." This address was a splendid annotation of the code but was more than that. The learned judge could not resist the temptation to diverge upon the consideration of federal constitutional landmarks and to caution the people against the present tendency to slip away from the old moorings. He especially attacked the principle embodied in the recall of judges, which he regarded as a scheme to make the people themselves a court of last resort on questions of law and jurisprudence. The proposition seemed to him too ridiculous for serious controversy. The people surely did not wish to have thrust upon them, said Justice Brown, such serious responsibility with which they were not fitted to deal. The recall, said Judge Brown, would only furnish opportunity to unscrupulous political leaders to keep the judges completely under their domination by threats of a recall and the experiment is bound to prove disastrous in the extreme. Judge Brown prophesied that there would soon be a reaction from the craze for a pure democracy when the people discovered that they were wholly incompetent to determine the details of the various departments of the government which required years of special training to master.

The anticipated discussion and crystalization of some plan of reform in civil and criminal procedure did not materialize. Mr. Everett P. Wheeler, of New York, speaking for the committee, counseled the postponement of all discussion of the subject until after the committee appointed by the Supreme Court under Act of Congress to reform the equity rules governing the federal courts has reported. Justice Lurton, a member of this committee, is now in London, observing the working of the English system. Numerous committees appointed from the various federal circuits are to meet next October to confer with the committee of the Supreme Court over the reform

in equity rules. The committee advises that effort be made to assist the committee in liberalizing the rules of equity so that the association can readily recommend them as an ideal system for state jurisdictions, to follow. It is hoped by many interested in this reform that Congress may empower the supreme court to revise the rules of law as well as of equity, doing away with the distinction of law and equity and forming one ideal code of procedure that would more readily be adopted by the states than one framed by any committee or commission created by the American Bar Association. A resolution to this effect was about to be proposed by Mr. Thos. W. Shelton, of Norfolk, Va., but Mr. Wheeler, of the Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay in Litigation, advised the postponement of all such propositions until after the Supreme Court Committee had completed its work and made its recommendations.

Hon. William B. Hornblower, of New York, gave a notable address on Wednesday evening (August 30), on "Anti-Trust Legislation and Litigation." The vast hall of the Massachusetts Institute of Technology was filled by a brilliant array of lawyers and statesmen who listened with close attention to a very learned statement of the legal difficulties surrounding the literal enforcement of the Sherman Act. Mr. Hornblower defended vigorously the Rule of Reason in the Standard Oil decision and stated that lawyers who have attacked this decision before the public, must have forgotten the very first principles of the law of contracts in restraint of trade where the question whether the restraint was due or undue, necessary or unnecessary, was always the dominating issue. He contended that Justice White used the term "in due restraint" and not "unreasonable." To reduce the arguments of Justice White's critics to a *reductio ad absurdum*, he proposed to amend the Sherman Act by adopting the suggestion of the critics as follows: "All contracts duly and properly restraining trade," etc., "are hereby declared illegal." This happy thrust was applauded vigorously. If this law were passed, said Mr. Hornblower, then every corporation or partnership formed by two or more merchants engaged in the same business in the same town must cease business, and every labor union must go out of existence and every farmers' alliance must immediately disband, because all of these contracts and combinations duly and properly restrain trade. In regard to the suggestion for the creation by the federal government of a commission to fix the prices and charges of interstate commerce, Mr. Hornblower said: "To my mind, this is an appalling suggestion. Nothing short of omniscience can enable such a commission to perform its work with intelligence and with safety to the best interests of producer and consumer."

President Taft pleased the association by a brief visit Thursday morning, and a few general observations that were not on subjects open to any controversy.

At this session also the association adopted a resolution declaring that "the application to judges of the principle of recall would create a judiciary whose decisions would not rest on the law of the land, but would be influenced by transient public sentiment, and that the establishment of such a judiciary would be destructive of our system of government."

The last order of business was the election of officers which resulted as follows: President, Stephen S. Gregory, Chicago, Ill.; Secretary, George Whitelock, Baltimore, Md.; Treasurer, Frederick E. Wadhams, Albany, N. Y.

This meeting of the association was notable for the large attendance of nearly a thousand delegates and a full representation of brilliant and representative advocates and judges from almost every state in the Union. About three hundred delegates, however, attended the business meeting and participated in the transaction of business.

A. H. R.

THE ONE-SIDEDNESS OF DISCUSSION AT MEETINGS OF BAR ASSOCIATIONS.

If there exist, or has ever existed, any class of citizens, who believe in the full and free right of discussion, it is the legal profession. Correspondingly as he rises in deserved esteem among his fellows, before the courts and as one of the people, the lawyer feels an obligation to equip himself for cogent presentation of the reason for any faith that is in him.

And the habit of his mind is to look for and heed, with as much of judicial temperament as he may summon to his aid, whatsoever may militate against any predisposition of his judgment or inclination to a particular conclusion.

Moreover, it is to be said that none more than the lawyer is more impatient of inspirational talk and *ad captandum* appeals in the midst of serious discussion in the

way of reply to what is urged after careful preparation. Being a believer in the benefits of patient investigation he prefers to hear its conclusions assailed by one who has prepared for the task.

If all or any great part of the foregoing observations is true, by whom and where is it to be expected, that it should be exemplified? Pretermitting any reference to appearances in court, where the exigencies of occasion may demand argumentative demonstration, the answer should be ready on the tongue of any one worthy of being called a practitioner of law.

Not only, however, on *his* tongue should there be in readiness this answer, but also on the tongue of the average citizen, if the bar is held in anything like the esteem, which being absent makes the profession so poor, that none need do it reverence.

We were led to these reflections by reading in 73 Cent. L. J. 122, the programme of the then coming annual session of the American Bar Association, held at the intellectual hub of America, and we thought we would wait the event to see whether our thoughts were all awry or were soon to be confirmed.

This programme informed us that on the morning of the second day Ex-Justice Henry B. Brown was to present a paper on: "The New Federal Judicial Code," followed by discussion upon the subject of the paper.

On the evening of that day there was to be the annual address by Hon. William B. Hornblower, on "Anti-Trust Legislation and Litigation," to be followed by "Unfinished Committee Reports."

On the third morning there was to be a paper by Hon. Robert S. Taylor, of Fort Wayne, Ind., on Equity Rules, 33, 34 and 35, followed by "Discussion Upon the Subject of the Paper."

Besides what might arise on reports of committees on subjects referred or in an incidental way, no discussion, other than as regards the papers above mentioned, was to be looked for.

The American Bar Association is fortunate that it is esteemed an honor by such distinguished men as Judge Brown, Mr. Hornblower and Mr. Taylor, to address it in a manner worthy of their great reputations, and without doubt it was an intellectual feast to listen to them.

But how greatly more important would the occasion of their addresses have proven, if, instead of impromptu discussion of the subjects they treated, the programme had included for each address or paper a carefully prepared dissent by another distinguished member of the bar, who would put to the touchstone of truth what each of these distinguished gentlemen were to say?

Discussion of the subjects of those papers was on the programme. But is it to be presumed that the careful views of these distinguished gentlemen could be adequately met on the spur of the moment by members of the association?

Or even, if they might be, could it be hoped, that there would be that illumination of any subject, which is susceptible of enough variant view to give rise to reasonable discussion, as to make its treatment pro and con worthy of a convention of lawyers?

Is it not well within the mark to say, that between views carefully prepared by a great leader of the bar, or by any member of the bar whose reputation makes him desired to be heard by his brothers, and random discussion by volunteers, however numerous, the treatment before an intellectual assemblage would be regarded as one-sided? If it is not, a paper or a prepared address on the subject should fall of its inherent weakness.

So little complimentary does it seem to the author of a worthy treatise on a legal subject before a convention of lawyers, that it should be cast upon the waves of tumultuous discussion, without a worthy opponent appointed to answer its contentions, that it seems a case of *facilis descensus Averni* for a programme to include an address on a question, as to which there is a great abundance of conflicting views

among judges and lawyers, without any discussion at all thereon.

We desire in no way, at this time, to comment on Mr. Hornblower's contentions, further than to say his address shows he was combatting, very strenuously, concededly opposing views and this session of the association would have been greatly of more interest to the lawyers in attendance, their brothers, not so fortunate, and the public at large, had some defender of those views, equally as distinguished as Mr. Hornblower, as a lawyer, been requested, concurrently with Mr. Hornblower, to answer his argument.

Further than this a practice of this kind —so thoroughly responsive to the intellectual yearning of the lawyer—would vastly increase the moral influence of these annual gatherings of bar associations.

Among other things it would dissipate any possible suspicion, that a lawyers' convention could be made a stage-setting or a propaganda for views of any clique or coterie, but, instead, an athenaeum, where legal scholars hurl Ithuriel spears against the armor of error.

The American Bar Association overlooked a great opportunity, when it failed to ask two lawyers of the calibre of Mr. Hornblower, but of opposite views, to present the subject upon which he spoke, giving them ample time beforehand to prepare their views, with each to serve the other with a brief, as in the trial of a case, or at least with an outline of what he intended to say.

Bar associations are not going to have any great influence upon legal or lay thought, unless by carefully prepared discussion, pro and con, of subjects treated by speakers addressing them, nor will they assist greatly toward the procuring of needed legislation.

Furthermore, if there are two sides as to any measure in professed advancement of law reform or legislative policy, the people like to see them threshed out in the open, and by those prepared to speak by reason of special investigation.

As bar associations go, the *camaraderie*, the good fellowship and the like are the drawing cards for attendance, but, if for every subject of wide legal interest, in which there is variance of opinion, scientific discussion were arranged for, not only would there be profit to the members who attend and benefit to the country at large, but animation in the midst of this fellowship would be accentuated.

If there is any subject of legal significance, that cannot find distinguished advocates, prepared to give lawyer-like reasons for opposing views, bar associations may well afford to ignore it in their conventions, and, if there exist any such diversity, they had better ignore it than to seem to espouse one side as against the other, or to be content with any one-sided discussion.

Prepared views on the one side and haphazard disputation on the other is not genuine discussion.

N. C. COLLIER.

St. Louis.

IRRIGATION: JURISDICTION OF A COURT IN ONE STATE TO ASCERTAIN AND DETERMINE WATER APPROPRIATIONS WITHIN THAT STATE WHERE THE POINT OF DIVERSION IS IN ANOTHER STATE.

Statement of Proposition: Can the courts of one state, after having obtained jurisdiction of the person of defendant who lives in another state, by personal service and his appearance in court, determine the priorities between the parties and adjudicate and decree plaintiff's rights and enjoin defendant from interfering with such rights.

A Water Right Real Property: A water right is real property appurtenant to the land to be irrigated by it.[1] Therefore an action to ascertain, determine and decree the extent and priority of that right par-

takes of the nature of an action to quiet title to real estate[2] and should be maintained in the jurisdiction in which the *res* or subject matter is situated.[3]. If, however, in ascertaining and determining the priority rights of the residents of the forum state, it becomes necessary to inquire into and ascertain the rights and priorities of the residents of another state on the same stream as a defensive issue, that certainly can and will be done by a court of equity, although the *res* or subject-matter involved in the issue and constituting the defense, be situated beyond the state line and in another jurisdiction.[4] Said Ailshie, Ch. J., who delivered the opinion of the court in the Idaho case of Taylor v. Hulet,[5] "It would seem, upon both reason and authority, that the courts of this state, in ascertaining, decreeing and protecting property rights in water appropriations within the jurisdiction of the state, may at the same time and for that purpose, inquire into and determine rights and priorities on the same stream that are located and situated beyond the state line, in order to fairly and finally judicially determine the relative rights of the parties and decree the extent of the right and title and the right of possession of the thing or subject-matter within this jurisdiction. This proposition ought to be accorded a special recognition and application by the courts in water and irrigation litigation. Streams rise in one state and flow into another, irrespective of boundary lines, and still the rules and doctrines of priority of appropriation and use are the same in most of the arid states. This is particularly true in respect to this case. Here the riparian doctrine of the common law has been abrogated in both Idaho and Wyoming and the rule of "first in time first in right" is recognized in both states. * * * * * * * The relative rights therefore, of appropriators of water of an interstate stream are the same whether the appropriators are all in the same state or in some other state. This proposition is accentuated in a case like this, where the court has not only jurisdiction of the *res* or subject-matter, but also obtains jurisdiction of the person of the defendant. In the case at bar, the diversion of the defendants being the act that causes the injury, takes place in Wyoming; but the injury itself that flows from the wrongful act, takes place in this state, It has long been recognized as a general rule that where the act is committed in one jurisdiction that occasions an injury or damage in another jurisdiction, the injured person may elect to bring his action in either jurisdiction."

Where the court has acquired jurisdiction of the subject-matter and of the person of defendant, it is thereby vested with full power and authority to hear and determine all questions that occur in the case and to issue such orders and writs as may be necessary to carry into effect its decrees and to render them binding and effective.

Should the person against whom the writ of injunction is issued go beyond the jurisdiction of the forum state so that the court in such state could not punish him for contempt and there commit acts in violation of its decree and injunction, its judgment and decree would not thereby be avoided, but the same would be enforced in the other state where personal service could be had. The decree and injunction from the forum state would undoubtedly be accorded full faith and credit in the other state.[6]

Similar Cases in the Arid and Semi-Arid States: In the Colorado case of Lamson v. Vailes,[7] it is held that under statutes providing for a mode of adjudicating questions concerning the priority of rights to water appropriations for irrigation purposes, the Colorado courts have no jurisdiction where the point of diversion is within the state, but the lands to be irrigated lie without the state.

(1) Taylor v. Hulett, 97 Pac. 37; 19 L. R. A. (N. S.) 535; Mills Irrigation Manual, p. 202, 211.
(2) Taylor v. Hulett, 97 Pac. 37.
(3) Id.
(4) Id.
(5) Id.
(6) Carpenter v. Strange, 141 U. S. 87.
(7) Lamson v. Vailes, 27 Colo. 201, 61 Pac. 231.

In Utah the Supreme Court held in Conant v. Deep Creek & C. Valley Irrig. Co.,[8] that a court of Idaho had jurisdiction to protect prior appropriators of water in Utah from subsequent appropriators of the water in Idaho, but deny that this rule should be extended to give to the Idaho court jurisdiction to adjudicate and determine the rights, as between themselves, of the several appropriators who divert water from the same stream in Utah and use the same for irrigation upon lands in Utah. In the Wyoming case of Willey v. Decker,[9] the court takes the position as did the court in Taylor v. Hulett, *supra*, except that it does not go to the extent of declaring that the jurisdiction of the courts of the state in which the property affected is located is exclusive.

In Rickey Land & Cattle Co. v. Miller & Lux,[10] a case instituted in Nevada, complainant sought to have determined and adjudicated its right and priority in and to a quantity of water from a stream flowing from the State of California into the State of Nevada. Defendant pleaded an appropriation and prior right to and in the same stream and that its diversion and use was in California. The case went to the United States Circuit Court of Appeals on the question of jurisdiction. This court took the position that the court in the state where the property affected is located had jurisdiction under the defensive answer to determine whether such appropriation was prior and paramount to complainant's appropriation and if not, to settle and quiet complainant's title and rights thereto.

JOHN E. ETHELL.

Rifle, Colorado.

(8) Conant v. Deep Creek & C. Valley Irrig. Co., 23 Utah 627, 66 Pac. 188.

(9) Willey v. Decker, 11 Wyo. 496, 73 Pac. 210.

(10) Rickey Land & Cattle Co. v. Miller & Lux, 152 Fed. 11.

MASTER AND SERVANT—WRONGFUL DISCHARGE.

DOHERTY v. SCHIPPER & BLOCK.

Supreme Court of Illinois. April 19, 1911.

95 N. E. 74.

Where a servant is discharged without cause before the expiration of his term of employment, and has been paid to the date of his discharge, he may sue for breach of contract of employment, and if the suit is not commenced, or is not tried until the term of employment has expired, he may recover the contract price, less what he has earned, or by reasonable diligence could have earned, subsequent to his discharge.

HAND, J.: This was an action commenced by E. Doherty against Schipper & Block, a corporation, before a justice of the peace in Peoria county, to recover for 8 weeks of service, at $25 per week, rendered by the plaintiff to the defendant as a milliner trimmer in its store, in the city of Peoria. The plaintiff recovered judgment for $200. The defendant appealed to the circuit court, where the case was tried before the court without a jury, and plaintiff recovered in that court judgment for $200. Schipper & Block prosecuted an appeal to the Appellate Court for the Second District, where the judgment of the circuit court was reversed, without remanding the cause, and, a certificate of importance having been granted, the appellee in the Appellate Court has prosecuted an appeal to this court.

It appears from the evidence that the appellant was employed by the appellee for 18 weeks at $25 per week, payable weekly. At the end of the ninth week the appellant was discharged, as she claims, without cause. On the day she was discharged she was paid in full. She returned on the day following her discharge, and offered to continue work, but was refused permission to work. At the end of the following week she brought suit before a justice of the peace for one week's wages, and recovered a judgment for $25 and costs, which appellee paid, a transcript of which judgment was introduced in evidence on trial of this case.

The trial court refused to hold the following proposition of law offered by the defendant: "The court holds that the recovery of the judgment and a satisfaction of the same, as shown in the evidence in this case, in the suit formerly brought by the plaintiff against the defendant before William Fielder, then a justice of the peace in and for Peoria county, Illinois, is a bar to the plaintiff's right of action in this case, and the plaintiff cannot re-

cover in this suit, and the finding must be for the defendant."

The sole question raised in this court and argued in the briefs filed by the respective parties is: Was the first judgment rendered by the justice of the peace a bar to this action?

(1) It is well settled that in case an employee is discharged without cause before his term of employment has expired, and he has been paid in full up to the time when he is discharged, he may treat the contract of hiring as continuing and bring an action for a breach of the contract of employment against his employer for discharging him, and if the suit is not commenced, or if commenced before, but not tried until, his term of employment has expired, he may recover the contract price of his wages, less what he has earned, or by reasonable diligence could have earned, in other employment subsequent to his discharge. Mt. Hope Cemetery Ass'n. v. Weidenmann, 139 Ill. 67, 28 N. E. 834. There is a class of cases which holds this remedy is not exclusive, but that, in addition to such remedy, the employee, where his wages, by the terms of the contract, are payable in installments, may bring an action for each installment of wages as it falls due, subsequent to his wrongful discharge, and that the recovery on one installment is not a bar to the recovery on subsequently accruing installments. Gandell v. Pontigny, 4 Camp. 375. The recovery for each installment of wages allowed in the class of cases referred to, as it falls due, is based upon the theory of constructive service, and while the right of a recovery was thus permitted for a time in England and in the courts of some of the states in the Union, that theory of recovery has been abandoned in England (Archard v. Horner, 3 C. & P. 349; Smith v. Hayward, 7 Ad. & Ell. 544; Fewings v. Tisdal, 1 Exch. 295), and quite generally in this country (James v. Allen County, 44 Ohio St. 226, 6 N. E. 246, 58 Am. Rep. 821; Howard v. Daly, 61 N. Y. 362, 19 Am. Rep. 285; Richardson v. Eagle Machine Works, 78 Ind. 422, 41 Am. Rep. 584; Olmstead v. Bach & Son, 78 Md. 132, 27 Atl. 501, 22 L. R. A. 74, 44 Am. St. Rep. 273).

(2) This court does not seem to have passed specifically upon the precise question presented here for decision, although in dealing with other questions growing out of the relations which exist between employer and employee the court has at times used language which might indicate a recovery could be had for the several installments of wages as they fall due, while at other times expressions have been used by the court which would indicate that such recovery could not be had. Hamlin, Hale & Co. v. Race, 78 Ill. 422; Mt. Hope Cemetery Ass'n. v. Weidenmann, supra. We have examined the numerous cases bearing upon the subject which have been cited in the briefs, and are of the opinion that upon principle the only action which logically can be maintained, upon the facts of this case, against the appellee, is an action for the breach of the contract of employment growing out of the wrongful discharge of the appellant, and that all damages resulting from such breach must be recovered in one action, and that, after one recovery has been had, that recovery is a bar to all future actions based upon the contract of employment, or growing out of the relation of employer and employee, by reason of the wrongful discharge of appellant.

We think the doctrine of constructive service, as applied to a case like this, and where used as a basis of recovery, is illogical and unsound. This court has universally held that the proper measure of damages in a case like this is the contract price, less what the employee earned or could have earned. That being so, if the discharged employee can find employment, it is his duty to accept it. How can it then be said that, while he is performing service for another person, he is constructively engaged in the employ of the employer by whom he was discharged? The result of this doctrine would be that the employee was actually performing service for one person while he was constructively performing service for another. The only true basis upon which an action like this can rest is for damages for breach of contract, and as the breach of contract occurs at the time of the discharge the cause of action is then complete, and such cause of action cannot be split up, but all the damages must be recovered in one judgment and in the first action; and, this being true, no subsequent action can be based upon the cause of action which has been merged in the first judgment. We therefore conclude that the judgment recovered before the justice of the peace was a complete bar to the subsequent action.

The conclusion of the Appellate Court was correct, and its judgment will be affirmed.

Judgment affirmed.

NOTE.—*Action for Wages Upon Constructive Service as Bar to Action for Wrongful Discharge.*—There is some remaining divergence of decision from what is held in the principal case, traceable to recognition of the doctrine of constructive service. The next following case shows also a status all its own, so far as our investigation discloses, in allowing different attitudes, taken in the order shown, as respects the wrongful discharge or renunciation of the contract of employment.

In Canada-Atlantic & Plant S. S. Co., Ltd., v. Flanders, 165 Fed. 321, 91 C. C. A. 307, plaintiff was employed for a term of five years upon a salary at so much per year, payable monthly. Seven months later he was discharged and he brought suit 28 days later, "to recover such damages as he has sustained to the date of this writ and also such damages as he may sustain to the date of trial of this action, but without prejudice to his right to bring subsequent suit or suits for damages accruing after date of the trial of this cause." etc.

In that trial there was a verdict for the amount of salary computed up to the day of trial.

He brought another action after this verdict, in which he claimed damages past and prospective to the expiration of the contract period, thus electing to treat the contract as rescinded, and he recovered, the case being tried by the court without a jury.

The defendant claimed that "the first action is identical in nature with the second, for damages for a general breach of the contract, that the damages awarded in the second action were recoverable in the first action, and that if in the first action the plaintiff voluntarily chose to limit or waive his recovery of full damages he is thereby concluded, since the cause of action was indivisible and the same in each case."

The Court of Appeals sustained the second recovery, saying: "It is now well settled that the final renunciation by one party of a contract providing for future performance gives to the other party an immediate right either to continue to assert his strict contract rights or to accept renunciation and sue upon that as a distinct cause of action. Roehm v. Horst, 178 U. S. 1; Pierce v. Tennessee Coal, etc., Co., 173 U. S. 1."

Then it is said it was quite clear there was not by the first action an election to accept renunciation, and afterwards plaintiffs elected by the second action to do this. It was said: "The mere fact that both (actions) seek damages for a breach of contract does not make them identical."

There is much logic in this holding, if constructive service is the equal of actual service, unless it might be claimed, that change of status is legally prejudicial to the employer. If the employer continues to tender renunciation, it looks like the employee could take his own time about accepting it, and in the meantime act in defiance of it.

In Stradley v. Bath Portland Cement Co., 228 Pa. 108, 77 Atl. 108, it was ruled that where an employee on a contract for a fixed period, with salary payable monthly, has been wrongfully discharged, he can, if he sees fit, bring a separate action as each instalment falls due, and if he omits to sue until more than one is due, he must include all instalments then due in his action. Therefore where not all instalments due were sued for in the first action, it was held he was barred to that extent, but not as to his right to sue for what subsequently fell due. It was said this rule was applied in Jenkins v. Scranton, 205 Pa. 598, 55 Atl. 788.

These two cases show, that the English rule of constructive service still obtains in Pennsylvania. See also Cox v. Bearden, 84 Ga. 304, 10 S. E. 627, 20 Am. St. Rep. 359; Allen v. Colliery Engineers Co., 196 Pa. 512, 46 Atl. 899; Webster v. Wade, 19 Cal. 291, 79 Am. Dec. 218; Champion v. Hartshorne, 9 Conn. 564.

In some states, even though seeming to recognize constructive service, yet they forbid the bringing of more than one suit, whether the loss be called damages for breach or wages. James v. Allen County, 44 Ohio St. 226, 6 N. E., 58 Am. Rep. 821; Colburn v. Woodworth, 31 Barb. 381; Van Winkle v. Satterfield, 58 Ark. 617, 25 S. W. 1113, 23 L. R. A. 853.

But, conversely, it is thought that suit may be just as if there were actual service and nonpayment as wages fell due, when there may be repeated actions, each claiming for whatever then remains due. Williams v. Luckett, 77 Miss. 394, 26 So. 967; Isaacs v. Davies, 68 Ga. 169.

It must be thought, however, that the weight of authority is with the principal case. It is a little difficult, however, to see how if one sues for wages, when his only right of action is for damages for breach of contract, according to authority in states that repudiate the doctrine of constructive service, that a judgment may be said to rest upon any basis whatever, and therefore why it should be deemed a bar against a suit upon the only cause of action that these courts will recognize, that is to say, damages for breach of contract arising out of a wrongful discharge. C.

CORAM NON JUDICE.

THE LEGAL SIDE OF THE CONTROLLER BAY CONTROVERSY.

President Taft is to be congratulated on his clear and forcible justification of the course of the government in withdrawing from the Forest Reserve 12,000 acres of Alaskan land fronting the newly-discovered harbor known as Controller Bay. The discomfiture, also, of the muck-raking critics is not the least of the advantages flowing from this "tempest in a tea-pot."

Conservation of the national forests, while a most commendable national policy, was never intended to interfere with interstate commerce. With as much justification might King George have decreed that Manhattan Island should remain a national park and be forever closed to the commerce of the world.

When the Chugach Forest Reserve was created by President Roosevelt no one knew that Controller Bay was anything but a dangerous marsh of mud flats. Later, however, it was discovered that a narrow channel, more than 30 feet in depth, curved round the shore well into the bay. Immediately the value of this harbor was seen and the natural thing for any government to do when it discovers a good harbor is to open it to the public under proper safeguards.

Accordingly, on October 28, 1910, President Taft eliminated from the Chugach National Forest Reserve twelve thousand acres of land fronting for about seven miles along the shore of Controller Bay.

The only interest the muck-raking press found in this situation was that somebody wished to use the harbor for commercial purposes at once. Evidently it would have been highly

satisfactory to this element of the "palladium of our liberties" if this excellent harbor, after its discovery, could have been shown to be utterly worthless for commercial purposes.

The discovery of valuable coal mines in the vicinity of the harbor gave to it, however, an immediate importance.

Who the owners of these coal lands are we do not know. We only know that they wished to use this harbor from which to ship their coal to the United States, and originally asked for only a small frontage for that purpose. The president, however, desiring to avoid the granting of a special privilege, opened the whole frontage along the harbor to public entry, reserving, however, 80 rods, out of every 240 rods along the shore to the United States government, as provided by law.

Under this reservation, no monopoly could possibly be created, since Congress still controls two and three-fourths miles of the most desirable frontage along the bay. But President Taft was not satisfied with even this conclusive answer to the cry of "monopoly" that was raised and submitted to Congress the following interesting legal considerations:

"The theory," says President Taft, "upon which it has been contended that the Controller Railway and Navigation Company has practically acquired an exclusive appropriation of the harbor, is that its anticipated ownership of the lands located by it and abutting on the shore, will give it the right to build viaducts from these lands to the side of the deep channel 3½ miles away and there establish wharves on the channel equal in frontage to that of the locations made on the shore and that even if it does not itself build such wharves, it can prevent anyone else from enjoying access to the channel for the whole length of its frontage, say two miles. I have shown that even if this were the law, the public reservations and the unlocated frontage would prevent monopoly of the channel. But it is not the law.

"The shore runs from high-water mark down to low-water mark. The owners of the upland, by virtue of the title they have acquired from the government, do not acquire a vested right of access to the deep water, and have no right or easement to build viaducts or trestles across the flats or wharves along the deep channel which Congress may not regulate or defeat.

"The principle of law is settled by the decision of the Supreme Court of the United States in the case of Shively v. Bowlby, 152 U. S. 1. In that case it was decided that 'grants by Congress of portions of the public lands within a territory to settlers thereon, though bordering on or bounded by navigable waters, convey of their own force no title or right below high-water mark.' and do not impair the right either of the United States or of the future state, when created, to deal with the tidal land between high and low water mark at pleasure. It was there held that in the state of Oregon a person who took title to land acquired under an act of Congress while Oregon was a territory, abutting on the tidal water of the Columbia River, could not object to a subsequent grant to another by the state of Oregon of the tidal lands upon which the land of the grantee under the act of Congress abutted.

"It follows that no matter what the ownership of the upland abutting on the tidal flats, Congress has complete power to regulate the trestles and wharves which shall be built from the shore to the channel and along it, and to determine their character and the distance along the channel they may occupy, and in the absence of congressional action, the abutting lot owners can possibly acquire at best only a revocable license or permit from the War Department to put in such structures as that department will certify do not interfere with navigation."

These are the words of the lawyer and the judge who thinks clearly and arrives at accurate conclusions by careful reasoning. This argument, moreover, was clearly sufficient and needed not the assurances contained in the following paragraph of the president's message to congress:

"It follows from what has been said that the question of how the channel of Controller Bay shall be used is wholly in the control of congress, and nothing that has been done by the executive order or otherwise imperils that control. With the opportunity that any projected railway has to secure access to the harbor by locating its right of way to the line of the shore under supervision of the Secretary of the Treasury, or by application to Congress, the mere private ownership of land abutting on the shore is relatively unimportant. If a railway company thus secures access by trestle and wharf to the deep-water channel, it may conveniently establish its terminal yards, stations, warehouses, and elevators wherever in [illegible]minated tract it can secure title, and extended frontage on the tidal flats is of no particular advantage. As 12,000 acres in the tract eliminated still remain open to entry, the prospect of a monopoly in one railroad company is most remote. I submit to all fair-minded men who may have been disturbed over the charges made in respect to the executive order of October 28, 1910, that it has been demonstrated by the foregoing that no public interest has suffered from its issue; that great good may come from it; and that no dishonest or improper motive is needed to explain it."

CORRESPONDENCE.

CONSTITUTIONALITY OF THE DECREE DISSOLVING THE TOBACCO TRUST.

Editor of the Central Law Journal:

In 69 Cent. L. J. 238, you published an article from me, in which I undertook to show that the Sherman Law, as then understood, to-wit, as making "every" combination that put any restraint whatever on trade, void, was repugnant to the Fifth Amendment to the Constitution of the United States. I have known of no attempt to make any answer to that article, but I have received many indorsements of it from leading lawyers of the country. I do not believe it possible to make any answer to the argument. I am not alone in thinking that that article drove the Supreme Court of the United States to the alternative of declaring the Sherman Law unconstitutional, or of finding some new interpretation of the law, that would relieve the business of the country from the destructive effects, that its decision in the Trans-Missouri case put it under. Hence the decision in the Standard Oil case. Many lawyers, whose

opinions are worth listening to, have assured me that this is their opinion.

The essential point of that article was, that, when the Sherman Law forbade "every" combination in restraint of trade, it deprived men of their liberties and property, in violation of the Fifth Amendment to the Constitution of the United States. As the matter now stands, the Supreme Court has stricken the word "every" out of the Sherman Law, so that it, as an act, is now innocuous. But in the American Tobacco Company case the Supreme Court has ordered the Circuit Court of the United States to break the American Tobacco Company up, root and branch, and bring about a new condition of things, which will be in harmony with the views it expresses in that opinion. It has done this without any discussion having been had before it of the character of those views and of the fact that they will deprive persons of their liberties and property without compensation.

Has the Supreme Court ended this matter by the course it has taken? It seems to me it has done no more than postpone the evil day. It seems to me it is now at the beginning of the real controversy. Its decision requires the Circuit Court to do the American Tobacco Company all the damage that the Sherman Law, with the word "every" in it, did, and it gives its fullest effect to that word. Nothing is better settled than that a man's business, that he has built up by years of effort and toil, is as much his property as his house or lot is. The American Tobacco Company's business is worth two hundred millions of dollars—that is, if its property were applied to the payment of its debts and preferred stock, its business would still earn twelve or fifteen millions of dollars per annum for its common stockholders. The Circuit Court is ordered to destroy this enormous amount of property without compensation to the common stockholders. The Fifth Amendment forbids Congress to do this. Can the Supreme Court authorize the Circuit Court, which is the mere creature of Congress, to do this? Plainly, it cannot. (Va. v. Rives, 100 U. S. R. 313, 3rd syllabus).

If, therefore, the Circuit Court of the United States breaks up the business of the American Tobacco Company and injures its property in the other ways possible under the decision, and the record is properly made up, and the case is properly presented to the Supreme Court of the United States, I have the utmost confidence it will reverse the Circuit Court of the United States and place this matter of the trusts upon its true foundation.

Yours truly,

WM. L. ROYALL.

Richmond, Va.

BOOKS RECEIVED.

David's Law of Motor Vehicles. By Berkeley Davids of the District of Columbia Bar. Price, $5.00. Northport, Long Island, N. Y. Edward Thompson Company. Review will follow.

Gilmore on Partnership. Handbook on the Law of Partnership, including Limited Partnerships. By Eugene Allen Gilmore, Professor of Law in the University of Wisconsin. Price, $4.00. St. Paul, Minn. West Publishing Co. Review will follow.

Black on Interpretation of Laws. Second Edition. Handbook of the Construction and Interpretation of the Laws. By Henry Campbell Black, M. A. Price, $3.75. St. Paul, Minn. West Publishing Company. Review will follow.

American State Reports, Vol. 138. Containing the Cases of General Value and Authority, Subsequent to those Contained in the "American Decisions" and the "American Reports," Decided in the Courts of Last Resort. By A. C. Freeman. Price, $4.00. San Francisco, California. Bancroft-Whitney Co.

BOOK REVIEWS.

THE LAW OF MOTOR VEHICLES.

The author of the volume under the above title is Mr. Berkely Davids of the District of Columbia bar and quite a creditable volume he has produced.

Its merit, however, lies chiefly in the fact that it is confined strictly to presentation of what has been decided in motor vehicle cases, that is to say, the extracting of all of the points from the cases," and putting them in logical order.

In this way the volume is readily usable for reference to authority, and understanding of that authority as resting on statutory phraseology is aided by the appendix which sets forth, at large, the legislation of respective states.

The citation of authority comes down to May 1st, 1911, and the volume professes to be exhaustive of American cases.

There is added a chapter on the law of Aviation more discursive than is the plan of the volume so far as its main purpose is concerned, showing that the author, like the rest of us, is on the waiting list as to this subject.

The volume with text and appendix of statute and index is less than 800 pages, is bound in sheep, of typographical excellence and comes from the publishing house of Edward Thompson Company, Northport, Long Island, New York. 1911.

HUMOR OF THE LAW.

When O'Dearie sued O'Mee for the payment of tenpence-three-farthings, says Answers, some people imagined that they were the most important people in the case. But this was not the opinion in Pat's district. It was he who had served O'Mee with the debated goods of O'Dearie, and he had been called to give evidence. When he returned home, he wore a big swagger.

"Shure, mither, an' it isn't aisy to be a witness," he boasted, "especially when the lawyers be such fools!"

"Were the lawyers fools?" exclaimed his mother. "Oi shouldn't have belaved it!"

"It's thrue, though," replied Pat. "It's as thrue as Oi'm sitting here, begorrah! They asked so many questions, Oi'm thinking they didn't know a blessed thing about the case!"

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Adverse Posession**—Color of Title.—One not the grantee may show color of title to land under a registered deed validly conveying title from the state.—Brown v. Hutchison, N. C., 71 S. E. 302.

2. **Alteration of Instruments**—Non Est Factum.—A defendant in an action in debt on a specialty, who by a verified plea denies the execution of the instrument, held entitled to show the materially altered condition of the instrument after signing.—Yancy v. Gordon, Ala., 55 So. 239.

3. **Arbitration and Award**—Fraud.—Where an arbitration is without exception or appeal, the award can only be successfully attacked on the ground of fraud.—Corey Coal Co. v. New York and Cleveland Gas Coal Co., Pa., 79 Atl. 812.

4. **Arson**—Averment of Ownership.—An indictment for the statutory offense of arson must aver ownership; but the ownership relates to the occupancy and not to the estate of the occupant.—Johnson v. State, Ala., 55 So. 268.

5. **Bankruptcy**—Amendment of 1910.—Bankr. Act July 1, 1898, as amended by Act June 25, 1910, held not to apply to a bankruptcy proceeding begun prior to the time the amendment took effect.—In re Gartman, D. C., 186 Fed. 349.

6.——Assignment for Benefit of Creditors.—An assignment for the benefit of creditors assenting thereto and agreeing to accept dividends in full claims held an act of bankruptcy, under Bankr. Act, sec. 3.—In re Courtenay Mercantile Co., D. C., 186 Fed. 352.

7.——Conditional Sale.—Where a bankrupt at the time of his adjudication held certain personal property under a Pennsylvania contract of conditional sale free from fraud, his trustee in bankruptcy acquired no better title as against the seller.—In re Gartman, D. C., 186 Fed. 349.

8.——Estoppel.—A bankrupt who had conveyed lands to his sons held estopped to claim homestead in the lands on setting aside the deeds as in fraud of creditors.—Hatfield v. Cline, Ky., 137 S. W. 212.

9.——Former Discharge.—A discharge in bankruptcy cannot be granted within six years following a former discharge in earlier voluntary proceedings.—In re Chase, D. C., 186 Fed. 408.

10.——Judicial Sale.—An order authorizing a receiver in bankruptcy to accept an offer made for property of the estate held to constitute the transaction a judicial sale under which the purchaser could be compelled by rule or attachment to comply with his contract.—In re J. Jungmann, Inc., C. C. A., 186 Fed. 302.

11.——Notice to Produce Papers.—Proceedings in bankruptcy to require a claimant of the bankrupt to produce instruments on the hearing of his contested claim are summary.—Baumhauer v. Austin, C. C. A., 186 Fed. 260.

12.——Preferences.—A trustee in bankruptcy may sue in the state court to recover money preferentially paid by a bankrupt.—Maxwell v. Davis Trust Co., W. Va., 71 S. E. 270.

13.——Probable Debt.—Liability of a bankrupt on a guaranty of certain indebtedness held neither presently due nor capable of liquidation at the time of bankruptcy; hence the creditor's claim was not entitled to allowance against the bankrupt's estate.—In re Merrill & Baker, C. C. A., 186 Fed. 312.

14.——Public Land.—A homestead entry-woman having mortgaged her entry before patent and become a bankrupt held to have a full vested equitable title to the land before bankruptcy, so that the lien of the mortgage was not affected by such proceedings.—Adams v. McClintock, N. D., 131 N. W. 394.

15 **Bankruptcy**—Statute of Limitations. That a creditor's claim was barred by limitations at the time he filed objections to the bankrupt's discharge did not deprive him of a subsisting cause of action, so as to bar his right to object.—In re Westbrook (D. C.) 186 Fed. 414.

16. **Banks and Banking**—Set-Off and Counterclaim.—In an action by a bank on a note, defendants held not entitled to avail themselves of a set-off consisting of damages sustained by the bank's surrender of certain collaterals to a mortgagor thereof.—Bank of Houston v. Kirkman, Mo., 137 S. W. 38.

17.——Surrender of Collateral.—A bank having notice of a chattel mortgage of pledged collaterals, it was bound on payment of its debt to surrender the collaterals to the mortgagee.—Bank of Houston v. Kirkman, Mo., 137 S. W. 38.

18. **Bills and Notes**—Burden of Proof.—Where an accommodation note is obtained by fraud, within Negotiable Instruments Law, sec. 94, an indorsee, suing the maker, has the burden of proving that he was the holder for value, as re-

quired by section 98.—Kennedy v. Spilka, 129 N. Y. Supp. 390.

19.——Presumption.—The act of a payee of a note in indorsing a credit thereon is against interest and is evidence prima facie establishing a payment by the maker.—Rhodes v. Guhman, Mo., 137 S. W. 88.

20. **Brokers**—Effecting Sale.—When property has been listed for sale with a number of real estate agents, the one who brings the seller and purchaser together and induces them to enter into the contract is the one who earns the commission, regardless of who first introduced the seller and purchaser.—Kice v. Dugan, Ky., 137 S. W. 240.

21. **Carriers**—Assumption of Risk.—Passenger on train not adapted to passenger service held to assume risk of injury from accident incident to such train, equipped and operated in the usual way.—Lawrence v. Kaul Lumber Co., Ala., 55 So. 111.

22.——Drunken Passenger.—A passenger conductor held required to keep a vigilant supervision over a drunken and quarrelsome passenger to prevent him from injuring or annoying fellow passengers, or to eject him.—Kline v. Milwaukee Electric Ry. & Light Co., Wis., 131 N. W. 427.

23.——Holding Train.—A railway company held under no duty to hold a train at a way station to allow a person who had gone on it to confer with a passenger time to alight.—Fox v. Minneapolis & St. L. Ry. Co., Minn., 131 N. W. 374.

24.——Negligence Inferred.—To leave the doors of a vestibule on a railroad car open when the cars are in motion justifies an inference of negligence.—Kearney v. Oregon R. & Nav. Co., 115 Pac. 583.

25.——Res Ipsa Loquitur.—A shipper may by proof of the nature of the accident establish a prima facie case of negligence.—Brewster v. New York Cent. & H. R. R. Co., 129 N. Y. Supp. 368.

26. **Charities**—Public Purpose.—A charitable trust requires that its beneficiaries shall be an uncertain body or class and that its purposes shall be public.—Moseley v. Smiley, Ala., 55 So. 143.

27. **Chattel Mortgages**—Crops to be Grown.—A mortgagor of crops to be grown must have an estate in the lands at the time of the execution of the mortgage.—McNeill v. Henderson & Hill, Ala., 55 So. 269.

28.——Crops to be Grown.—A mortgage on an unplanted crop of cotton held superior to the landlord's lien for rent, where the landlord never had actual or constructive possession of the cotton.—Mutual Warehouse Co. v. Hamilton, Ala., 55 So. 116.

29. **Contracts**—Action for Breach.—In an action for breach of contract of employment, a general averment that plaintiff had performed all conditions precedent held sufficient.—Comstock v. J. R. Droney Lumber Co., W. Va., 71 S. E. 255.

30.——Compliance with Conditions.—Where a building contract provides that no extra charges shall be made unless upon an order in writing, there can be no enforceable charge unless the order has first been made.—Piper v. Murray, Mont., 115 Pac. 669.

31.——Law of Place.—Where a contract of guaranty was made in New York, it was to be construed according to the law of that state most favorably to the guarantee, though subject to the rule that, when the meaning is ascertained, the guarantor's liability is strictissimi juris.—In re Merrill & Baker, C. C. A., 186 Fed. 312.

32.——Modification by Parol.—An executory contract under seal may not be modified by parol so as to interpose a new element or add new terms.—Becker v. Becker, Ill., 95 N. E. 70.

33.——Purchase of Land.—A promise by a judgment debtor to purchase the land under the judgment and allow an heir of the deceased debtor to pay the price and receive a conveyance, held enforceable by coheirs on the death of the heirs.—Timmons v. Boyd, S. C., 71 S. E. 298.

34.——Public Policy.—A provision in a laundry driver's contract that he would not, while in complainant's employ or within two years after leaving same, divert complainant's customers, held not contrary to public policy.—Eureka Laundry Co. v. Long, Wis., 131 N. E. 412.

35.——Tendering Performance.—Where one party to a contract has refused to perform his part, it is a breach of contract which relieves the other party of the necessity of tendering performance.—Czerney v. Haas, 129 N. Y. Supp. 537.

36. **Constitutional Law**—Impairment of Contract.—Where a city has legally granted an exclusive franchise to an electric light company for a term of years, and the grant has been accepted and acted on, it is an impairment of the obligation of the contract within the meaning of the federal Constitution for the city to enter into competition with the grantee during the term.—Monett Electric Light, Power & Ice Co. v. Incorporated City of Monett, Mo., C. C., 186 Fed. 360.

37. **Corporations**—Accommodation Maker.—That notes executed by an officer of a corporation in its name were given for the accommodation of others interested therein held no defense to a suit on the notes by a holder in good faith before maturity.—National Bank of Commerce in St. Louis v. Sancho Packing Co., C. C. A., 186 Fed. 257.

38. **Charities**—Corporation.—Note signed by president and treasurer of charitable corporation held not to purport to bind the corporation without proof of their authority.—People's Nat. Bank v. New England Home for Deaf Mutes, etc., Mass., 95 N. E. 77.

39. **Corporations**—Partnership.—A corporation cannot enter into a partnership.—Williams v. Johnson, Mass., 95 N. E. 90.

40.——Voting Power of Stock.—A person may not waive a constitutional or statutory provision fixing the voting power of stock in corporations.—Brooks v. State, Del., 79 Atl. 790.

41. **Covenants**—Counsel Fees.—A covenantee cannot, in an action for breach of a covenant of warranty, recover counsel fees expended in an unsuccessful defense of the suit, resulting in his eviction.—Mengel Box Co. v. Ferguson, Tenn., 137 S. W. 101.

42. **Criminal Law**—Conspiracy.—A criminal conspiracy may be proved by circumstantial evidence.—Osborne v. State, Miss., 55 So. 52.

43.——Former Prosecution.—A prosecution of a physician charged with prescribing intoxicating liquors with intent to evade the license law

held not to bar a subsequent prosecution for prescribing liquor with intent to evade the prohibition law.—State v. Terry, La., 55 So. 15.

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